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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,514	12/09/2003	Paul H. Lundeen	48231-01011	3727

7590 06/02/2006

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EXAMINER

GREENHUT, CHARLES N

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/731,514	Applicant(s) LUNDEEN, PAUL H.	
	Examiner Charles N. Greenhut	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

I. Information Disclosure Statement

1. The information disclosure statement filed 3/12/04 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the image in the GERTMAN reference provided by applicant is indecipherable. It has been placed in the application file, but the information referred to in that reference has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

- 1.1. The image in applicant's second submission of the GERTMAN reference remains indecipherable. Applicant should consider submitting the original documents or electronic submission if adequate clarity can not be obtained from a photocopy or facsimile. Additionally, applicant should submit an additional PTO form 1449, or the electronic equivalent thereof, requesting consideration of this reference.

II. Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-10 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. Claim 1 recites the phrase, “a retaining wall extending upward from the outer edge of said loading end facing away from said vehicle” in lines 6-7.

1.1(a) There is no antecedent basis for “the outer edge” nor is an outer edge an inherent or readily ascertainable feature of an end of a loading end of the receiving member, i.e., a number of edges could be considered the “outer” edge. Without further clarification, the meaning of this term is unclear and renders the claim indefinite.

1.1(b) It is unclear whether the loading end, the outer edge, or the retaining wall is facing away from the vehicle. In any case, it is unclear how an end, edge or a wall can be facing away from the vehicle, i.e., a particular side or surface of a feature may be facing away from another feature but no such side or surface is defined.

1.2. Claims 3 and 4, recite the phrase, “said vehicle end of said receiving member being positioned at an angle from about [x] degrees to [y] degrees.” However, there is no indication what this angle is measured relative to.

III. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1, 4, 9, and 13-14 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SCHUTZ (US 2,271,444 A).

1.1. With respect to claim 1 and 4, SCHUTZ discloses a receiving member (19) having a vehicle end and a loading end, movable between a deployed (Fig. 1) and a transfer position (Fig. 2), retaining wall (rear wall of 19), a connector (20) rotably connecting to the vehicle proximate the storage area (13), operation means (23), base member above the ground (bottom of 19) the vehicle end of the receiving member angled at about 90 degrees.

1.2. With respect to claim 9, and 13-14 SCHUTZ additionally discloses opposite sides extending above and away from the vehicle and side walls (of 19), a hinge and pivot mechanism (22).

IV. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 2-3 and 5-6 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHUTZ in view of MICHALSKI (US 5,573,365 A).

1.1. With respect to claims 2-3, SCHULTZ only discloses an angle of 90 degrees between the vehicle end of the receiving member and the base member. With reference to Fig. 2, MICHALSKI teaches a tarp (200) extending from a guide bar (605) at an obtuse angle to the ground. The tarp (200) extends horizontally at the ground to edge (204). The angle between the section of tarp running from the guide bar (605) to the ground, and the section extending horizontally along the ground is

infinitely variable between about 90 degrees and about 180 degrees. The angle formed will depend upon the length of tarp (200), the height of side wall (302), and the forces exerted at (204), by lines (209)/(207), and by the applied load (999). Simply stated, the angle formed between the base and vehicle end of the receiving member is largely a function of the height of the edge of the vehicle to which the receiving member is connected. It would have been obvious to one of ordinary skill in the art to create any angle within the range of about 90 to about 180 degrees as taught by SCHULTZ in order to accommodate for vehicles and/or loads of various sizes.

1.2. With respect to claim 5-6, SCHULTZ additionally discloses the operation means activated and the material slides with the force of gravity down the base and vehicle, guide member (front wall of 19),

2. Claim(s) 7 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of MICHALSKI and further in view of HENDRICKSON (US 6,877,534).

2.1. With respect to claim 7, SCHULTZ fails to teach a frame having canvas thereon. HENDRICKSON teaches a frame having canvas thereon. It would have been obvious to one of ordinary skill in the art to modify SCHULTZ in view of MICHALSKI with the frame and canvas of HENDRICKSON in order to provide a cost effective support that can be easily replaced and/or cleaned.

3. Claim(s) 8 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of MICHALSKI and further in view of VON DER HEIDE (US 4,892,259).

3.1. With respect to claim 8, SCHULTZ fails to teach a flat metal sheet formed in the shape of a tray. VON DER HEIDE teaches a flat metal sheet formed in the shape of a

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tray. It would have been obvious to one of ordinary skill in the art to modify SCHULTZ in view of MICHALSKI with the tray of VON DER HEIDE in order to accommodate loose particulate.

4. Claim(s) 10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of SMITH (US 6,869,265).

4.1. With respect to claim 10, SCHULTZ fails to teach a reel and cable. SMITH teaches a reel and cable. It would have been obvious to one of ordinary skill in the art to modify SCHULTZ with the reel and cable of SMITH to cost-effectively actuate the platform.

V. Response to Applicant's Arguments

Applicant's arguments entered 4/6/06 have been fully considered.

1. With respect to claim 1, applicant argues that FONTRIER does not anticipate claim 1 because FONTRIER does not disclose a retaining wall extending upward from the outer rear edge of the loading end facing away from the back of the vehicle. This argument is persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made over SCHUTZ, as discussed above.

VI. Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end

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of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



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